NITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF THUNOU

FERNANDO FONTANEZ

PATEREY DABE

DEPARTMENT OF MOMELAND SECURITY AGENT

NO. 07 C 6391

"HONOMALE"

DUOGE WILLIAM T. MART

NOV 8 2007 Nov. 30, 12007

MICHAEL W. DOBBINS CLERK, U.S. DISTRICT COURT

MOTION TO ADD PARTY DEFENDANT IN CIVIL ACTION

NOW COMES TERNANDO FONTANEZ" FLAINTIFF RESPECTFULLY RECONSIDED

THAT THIS MONORABLE COMET AND HOMORABLE JUDGE HART RECONSIDED

MINUTE CROWN DISMISSING "THE DEPARTMENT OF MONEY SECURITY" AS DEFENDANTS

AND ADD THEM AS; DEFENDANT "JEFFREY DABE" ACTED WHILE IN HIS OFFINIAL

CAFFRETY WHILE WORKING AS AN AGENT FOR "THE DEPARTMENT OF MOMERAND SECURITY"

AND PREVIOUSLY IN CASEHT ONC TOSGO "THE MONORABLE JUDGE GEORGE M.

MAROUNCH" DID NOT DISMISS THE DEPARTMENT OF HOMERAND SECURITY AND HOMERAND

FOR THE ATTORNEY GENERAL OF THE UNITED STATES ATTORNEY

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THUS CREATING A MARKER TO PUBLIC DEFENDANT JEFFREY DABE IN MILL OFFICIAL

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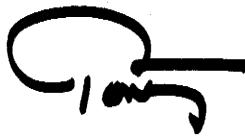
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Order Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	George M. Marovich	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 7056	DATE	2/1/2007
CASE TITLE		Fontanez v. Dabo	e

DOCKET ENTRY TEXT:

Plaintiff Fernando Fontanez's petition to proceed *in forma pauperis* [4] is granted. The clerk's office is directed to issue summons and forward the summons and a copy of the complaint to the U.S. Marshals Service in order to effectuate service on defendant. Plaintiff Fontanez's motion for appointment of counsel [5] is denied.

■[For further details see text below.]

Docketing to mail notices.



STATEMENT

Petitioner Fernando Fontanez ("Fontanez") seeks leave to file *in forma pauperis* his complaint against Jeffrey Dabe ("Dabe"), an individual alleged to be an agent employed by the United States Department of Homeland Security. Fontanez also moves for appointment of counsel.

Under 28 U.S.C. § 1915, when determining whether a petitioner may proceed in forma pauperis, the Court engages in a two-step analysis. First, the Court examines whether the petitioner has sufficiently demonstrated that he is impoverished within the meaning of the statute. Nietzke v. Williams, 490 U.S. 319, 324 (1989). Second, the Court determines whether the complaint is frivolous. Denton v. Hernandez, 540 U.S. 25, 31 (1992); Nietzke, 490 U.S. at 324. First, the Court finds that Fontanez has sufficiently demonstrated that he is impoverished within the meaning of the statute. In his affidavit, Fontanez states that he has no assets and has no income aside from \$155 per month in food stamps.

Second, the Court has reviewed Fontanez's complaint. Most of the allegations in Fontanez's complaint are plainly frivolous. He includes, however, some allegations which, while not stating a claim upon which relief may be granted, are not frivolous. According to the attachments to Fontanez's complaint, Dabe is a U.S. Marshal. Dabe arrested Fontanez in June 2006 so that he could be questioned about possessing letters that were threatening to judges. Fontanez alleges that Dabe falsely arrested him in violation of 42 U.S.C. § 1983. Although any such claim would probably have to be brought as a *Bivens* action instead of a § 1983 claim and would require allegations that his arrest was without probable cause, Fontanez's claim does not appear to be frivolous. Thus, the Court grants Fontanez leave to file his complaint in forma pauperis.

The Court notes, however, that it is aware that in the days and weeks surrounding the filing of this suit, Fontanez filed at least a dozen other suits in the United States District Court for the Northern District of

STATEMENT

Illinois. Many of those suits have been dismissed as frivolous, and the Executive Committee entered an order restricting Fontanez's ability to file new suits. That order does not affect this suit. The Court notes, however, that should it become clear at any point that this case is being pursued maliciously, the Court will not hesitate to dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B)(I).

Finally, Fontanez moves for appointment of counsel. The Seventh Circuit has explained that "indigent civil litigants have no constitutional or statutory right to be represented by counsel in federal court." Jackson v. County of McLean, 953 F.2d 1070, 1071 (7th Cir. 1992). The Court may, in its discretion, request counsel to represent an indigent litigant if the individual has made reasonable efforts to secure counsel and if the presence of counsel seems likely to make a difference in the outcome. Farmer v. Haas, 990 F.2d 319, 321-322 (7th Cir. 1993). Here, Fontanez failed to answer the question in his motion for appointment of counsel that asked him to declare the efforts he had made to retain counsel. Because the Court is not aware of any reasonable attempts by Fontanez to secure counsel, the Court denies Fontanez's motion for appointment of counsel. (This denial is without prejudice, and Fontanez is free to file a new motion for appointment of counsel.)

Accordingly, the Court grants Fontanez's petition to proceed in forma pauperis. The Court directs the clerk's office to issue summons and forward the summons and a copy of the complaint to the U.S. Marshals Service in order to effectuate service on defendant. The Court denies his motion for appointment of counsel.

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PROCESS RECEIPT AND RETURN
See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

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1. CLERK OF THE COURT

FORM USM-285 (Rev. 12/15/80)

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U.S. Department of Justice United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

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(hder Form (01/2005)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	William T. Hart	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	07 C 6391	DATE	11/20/2007
CASE TITLE	Fernando Fontane	z vs. Department of Hor	neland Security, et al.

DOCKET ENTRY TEXT

Plaintiff's motion for leave to proceed in forma pauperis [4] is granted. Plaintiff's motion for appointment of
counsel [5] is denied. Defendants Department of Homeland Security and Gus P. Coldebella are dismissed as
a party defendants.

Docketing to mail notices.

Courtroom Deputy	CW
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U.S. Department of Justice

United States marshals Service

Northern District of Illinois

219 South Dearborn St. Rm. 2444
Chicago, IL 60604
312-353-5290

November 27, 2007

Fernando Fontanez P.O. Box 578941 Chicago, IL 60657

RETURN TO CIVIL DESK

Your forms (s) are being returned to you for the following reason (s) checked. Please complete and return within TEN (10) days from the date of this letter. We can not

process your request without the requested information. You have not filed your Summons and Complaint with the Clerk of the Court PRIOR to completing the USM-285 Form. (To file your Summons and Complaint Contact the Clerk of the Court at 312-435-5691 219 S. Dearborn St. on the 20th floor) You have not completed a USM-285 Form (s) (Process Receipt and Return) for each defendant that you would like served. Enclosed is a USM-285 Form (s) with a return self-addressed stamped envelope. DO NOT REMOVE THE CARBONS FROM THE USM-285 FORM(S). You did not include one or more of the following on the USM-285 Form: The defendant (s) (the person who will be served) first and last name. X The defendant (s) (the person who will be served) mailing address with zip code and apartment number if serving at a place of business include department. (NO P.O. BOX ADDRESS ACCEPTED)

+ We are unable to 85 RVF the U-5. attorney of attorney General because the department of thomsand Security has been dismissed as defendants.

U.S. Department of Justice United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

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NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CAgent Jeffrey Dabe, C/O Department of Howeland Security AT AT AREA DATESS (Street or RFD, Apartment No., City, State and ZIP Code) Department of homeland Security, Washington, DC 20528 SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW: Number of parties to be served which this Form - 285 Fernando Fontanez P.O. Box 578941 Chicago, II 60657 SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses Feliphone Numbers, and Estimated Times Available For Service). Following AGENT JEFFREY DABE C/O DEDY OF MONTELAND SEQUENT TO CALL MEGAN GENT JEFFREY DABE C/O DEDY OF MONTELAND SEQUENT TO CALL MEGAN GENT JEFFREY DABE C/O DEDY OF MONTELAND SEQUENT TO CALL MEGAN GENT JEFFREY DABE C/O DEDY OF MONTELAND SEQUENT TO CALL MEGAN GENT JEFFREY DABE C/O DEDY OF MONTELAND SEQUENT TO CALL MEGAN GENT JEFFREY DABE C/O DEDY OF MONTELAND SEQUENT TO CALL MEGAN GENT JEFFREY DEPENDANT SIgnature of Automey or other Originator requesting service on behalf of: BE PLAINTIFF DEPENDANT TELEPHONE NUMBER DATE 11-27 SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS All acknowledge receipt for the total number of process indicated. Sign only first USM 285 if more than one USM 285 is submitted) 1 of 3 No. 24 No. 24 A person of suitable age a cludden of shown above) A person of suitable age a cludden of shown above) A person of suitable age a cludden of shown above)	
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Fernando Fontanez P.O. Box 578941 Chicago, I1 60657 SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Address and Estimated Times Available For Service): SERVICE (Include Business and Alternate Address and Alternate Address and Stimulation on U.S.A.) Signature of Attorney or other Originator requesting service on behalf of: Signature of Attorney or other Originator requesting service on behalf of: Signature of Attorney or other Originator requesting service on behalf of: Signature of Attorney or other Originator requesting service on behalf of: Signature of Attorney or other Originator requesting service on behalf of: Signature of Attorney or other Originator requesting service on behalf of: Signature of Authorized USMS Deputy or Clerk TD (Signa only first USM 285 if more than one USM 285 is submitted) Thereby certify and return that I is have personally served, is have legal evidence of service, is have executed as shown in "Remarks", the process descrit on the individual, company, corporation, etc., shown at the address inserted by in the control of individual served (if not shown above) A person of suitable age a creation then residing in the cusual place of abode.	
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